IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

Date of order :: August 8, 2007

Yogesh Kumar *Versus* M/s. Rajan Jhiriwal

S.B. Civil Misc. Appeal No. 702/2007 under Order 43 Rule 1 CPC against the order dated 12.01.2007 passed by Additional District & Sessions Judge (Fast Track) No. 2, Alwar in Civil Misc. Case No. 204/2006.

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.P. Garg for the appellant
Mr. R.K. Mathur for the respondent

BY THE COURT:

1. Heard learned counsels.

2. This appeal has been preferred against the order dated 12.01.2007 granting temporary injunction in favour of the plaintiff in

a suit filed seeking to restrain the defendants from using the trademark known as “MAMA” Gutkha.

3. Learned counsel for the defendant-appellant Mr. R.P. Garg submits that the appellant is the user of the said trademark “MAMA” from a prior point of time under a deed of assignment from the predecessor in title dated 17.02.2006. He has further submitted that the application filed for registration by the defendant has been processed by the competent authority under the Trademark Act, 1999 vide certificate dated 10.04.2007 filed alongwith the memo of appeal. He has further pointed out that vide order dated 18.05.2007 passed under Section 21 of the Trademark Act, the opposition to the grant of trademark to his predecessor in title of that trademark M/s. Mama Ji Tobacco Traders, Gwaliar Road, Agra, was withdrawn. However, he submits that the trademark is yet to be registered in favour of the present defendant-appellant. He, therefore, urged that the learned trial court could not have allowed the temporary injunction application of the plaintiff and restrained to the defendant-appellant from using the trademark “MAMA” Gutkha.

4. Opposing these submissions, learned counsel for the plaintiff-respondents Mr. R.K. Mathur has submitted that a bare perusal of

the deed of assignment would show that the trademark assigned in favour of the present appellant M/s. Y.K. Products owned by Mr. Yogesh Kumar was “MAMA JI” and therefore, there was never any assignment of the trademark “MAMA” in favour of the present appellants. He submits that the respondent-plaintiff has been using the trademark “MAMA” for the Gutkha manufactured by him since 2001 and respondent-plaintiff has already applied for the registration of the trademark for the said trademark “MAMA” on 31.12.2001 and that application is also pending with the competent authority. He, therefore, urged that the temporary injunction granted by the learned trial court restraining the present defendant-appellants from using the trademark “MAMA” is justified and the present appeal is devoid of any merit.

5. The argument of the learned counsel for the plaintiff-respondent is countered by the learned counsel for the appellant Mr. Garg by submitting that the use of term “MAMA” in place of “MAMA JI” obtained by him under the deed of assignment dated 17.02.2006 is one and the same and therefore, the defendant-appellant should be deemed to be using the said trademark from a prior point of time since 1992 and therefore, no such restraint order could have been passed against the defendant-appellants.

6. Having considered the rival submissions, this court is of the opinion that the principle on which using of trademark can be prohibited or restricted is the deceptive similarity. The deed of assignment under which the present appellants claim to be using the said trademark from the prior point of time was for “MAMA Jl” and not “MAMA”. There is a significant difference between the two and the submissions of the learned counsel for the appellants that both are similar or same, does not have any force. Admittedly, the applications of both the parties for registration of the trademark are still pending and they are yet to be decided by the competent authority.

7. This court finds no error in grant of temporary injunction against the present defendant-appellants restraining them from using the trademark “MAMA” during the pendency of the suit. The present appeal being devoid of merit, is dismissed. No order as to costs.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 45